SIKKIM

GOVERNMENT GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok Saturday, 5th February, 2005 No. 42

GOVERNMENT OF SIKKIM
EXCISE (ABKARI) DEPARTMENT
GANGTOK

No.17 /Ex(Abk)/ Dated:2.2.2005.

NOTIFICATION

In exercise of powers conferred by clause (j) of section 77 read with Section 27 of the Sikkim Excise Act, 1992 (2 of 1992), the State Government hereby makes the following rules namely:-

CHAPTER – I

PRELIMINARY

Short title, extent and commencement.

1. (1) These may be called the Sikkim Excise (Licencing for Brewing / Sale of Pachwai by Retail) Rules, 2005.
(2) They extend to the whole of Sikkim.
(3) They shall come into force on the date of their publication in the Official Gazette.

Definitions.

2. In these rules, unless the context otherwise requires: -
(a) "Act" means the Sikkim Excise Act, 1992;
(b) "Pachwai" means fermented rice, millet or other grain or any other substances which the Government may by notification declare to be the raw materials for making Pachwai whether mixed with any liquid or not and any liquid obtained there from whether diluted or undiluted but does not include beer;
(c) "form" means form appended to these rules;
(d) "licence" means a licence granted under these rules;
(e) "licensed premises" means premises in respect of which a licence has been issued under these rules;
(f) "licensee" means an individual, a firm, a company incorporated under the Registration of Companies Act, Sikkim, 1961 whom a licence under these rules for the retail sale of Pachwai is issued.

CHAPTER - II

GRANT OF LICENCE

Application for licence

3. Any individual, firm and company registered under the Registration of Companies Act, Sikkim, 1961 desiring to obtain Excise Licence for Brewing / Sale of Pachwai by Retail shall apply in Form I appended to these rules to the Commissioner of Excise.

Consideration of Application.

4. On receipt of the application in Form I as referred to in rule (3), the particulars and other information as furnished by the applicant shall be verified and scrutinized by the officers authorized by the Commissioner of Excise and thereafter the said Officers shall submit the verification report in Form II.

Eligibility criteria for obtaining the licence and for becoming the Salesman.

5. The Excise licence for Brewing/ Sale of Pachwai by retail shall be granted only to the bonafide resident of the State of Sikkim. This shall mutatis-mutandis apply for appointment of Salesman of the licensee.

Issue of Settlement Order.

6. (1) The Commissioner after considering the verification report as referred to in rule 4 above and after satisfying himself that the premises proposed for location of the shop for selling Pachwai is in conformity with the provisions of the Act, rules and instructions issued by the Government or the Commissioner in this behalf from time to time, may inform the applicant of the decision and issue the settlement order in Form III on payment of requisite fees as Licence Fee as prescribed by the Government by notification and security deposit of the equivalent amount: Provided that if the applicant in whose favour the settlement order with instruction as prescribed in Form III therein fails to comply within 7 (seven) days of the receipt of intimation, it shall automatically be treated as cancelled Location of the shop.

Location of the shop.

(2) The location of the shop shall be as prescribed by the Government by notification.

Temporary Licence on special occasion

7. Temporary Licence on special occasion namely Maghe Sankrati Mela, seasons of Hot Spring, Namsung Mela, Gumpa Mela, etc. etc. shall be issued on daily basis fee as prescribed by notification from time to time.

Tenure of Licence.

8. The tenure of licence shall be for a block of 4 (four) financial year and the block year shall commence from 1.04.2005.

Issue of duplicate Licence.

9. If the original licence is lost, a duplicate may be issued on payment a fee of Rs.50/- (Rupees fifty) only unless for a special reason the Commissioner considers that the fee should be waived.

Renewal of Licence.

10. The Licence shall be renewed during the last week of March every year after the payment of annual licence fee as prescribed by notification. The renewal of Excise Licence can be denied in case of any violation of the terms and conditions laid down in these Rules.

Materials to be used for making Pachwai.

11. For making Pachwai only such materials can be used which are as prescribed by the Government by notification.

No foreign liquor to be mixed with Pachwai.

12. The licensee shall not mix any foreign liquor /country liquor with Pachwai and sale to customers.

Pachwai to be sold at the licensed premises.

13. The licensee shall sell only Pachwai and no other liquor in the licenced premises.

Drinking allowed only in licensed premises.

14. The person in charge of the licensed premises shall allow drinking of Pachwai only in the licensed premises. In case of over drunken customer who create disturbances to others in the licensed premises, the licensee should report to the Officer -in-Charge of the nearest police station.

Hygienic condition and provision of Toilets

15. Proper hygienic condition shall be maintained in the licensed premises and clean toilet facilities within easy reach of the customer shall be provided.

Licensed Brewer to sale Pachwai by wholesale only to the licenced retailer of Pachwai.

16. (1) The Licensed Brewer shall sell by wholesale the Pachwai only to the retailer of Pachwai against the Transport Pass in form IV issued by any officer authorised by the Commissioner of Excise.
(2) He shall also maintain Brew and Sale Register in Form V.

Restriction on sale of Pachwai.

17. The licensee shall not sell Pachwai following categories of persons, namely:-
(a) lunatic or insane persons;
(b) person who is in an intoxicated state;
(c) person known or suspected to be involved in disturbance of law and order.
(d) person who is under the age of eighteen years;
(e) students either of school or college; and
(f) the Armed Forces of the Union, members of Police Force or any other personnel in uniform.

Regulationof businessof licensee through Manager / Salesman.

18. (1) A holder of licence shall carry on his business under the licence either personally or through Manager / Salesman duly authorised by him in his behalf by a written application in Enclosure II of Form I alongwith three copies of passport size photographs and granted Salesman Registration Certificate in Enclosure III of Form I duly signed by the Commissioner or the Excise Officers authorised by the Commissioner. If more than one Salesman is proposed to be appointed, separate application with relevant particulars are to be submitted.
(2) A licensee shall not authorize any of the following persons as his Salesman, namely: -
(a) persons below eighteen years of age.
(b) persons suffering from any infection or contagious disease;
(c) persons of unsound mind;
(d)persons who in the opinion of the Commissioner are of bad character;
(e)persons whose Salesman registration certificates or licences have previously been cancelled;
(f) persons convicted of any offence; or
(g) women, with or without remuneration without the previous permission in writing to the Commissioner :

Provided that on any reason the Commissioner can order the withdrawal of salesman registration the Salesman registration certificate shall forthwith be withdrawn.

(3) The licensee shall keep in the licensed premises an up-to-date list showing the names of all authorised Salesman and display Excise Licence duely showing the working hours as may be prescribed by the Commissioner in a prominent position within the licenced premises. The licensee shall also display at entry point of licensed premises the word "Pachwai Shop".

(4) The licensee shall produce for inspection his licence on demand by the Commissioner or any other officers authorised to do so.

(5) The licensed premises and stock of Pachwai contained therein shall at all times be open to inspection by the Commissioner and any other Officers empowered under section 58 of the Act.

(6) The licensee shall, when called upon by any excise officers not below the rank of a Sub-Inspector, Excise empowered by the Commissioner or any Excise Officer empowered under section 58 of the Act, give an explanation in writing regarding any irregularity detected at his licensed premises and shall furnish any information regarding the management of the said premises and shall answer all reasonable question to the best of his knowledge and belief. He shall also on demand allow an inspecting officer to take without payment samples of Pachwai for analysis.

(7) The licensee shall not sell, transfer or sublet his right of selling Pachwai conferred upon to him by the licence nor shall he in connection with the said right enter into an agreement or arrangement which is of the nature of a lease. If any question arises as to whether any agreement or arrangement is of the nature of a lease, the decision of the Commissioner on such question shall be final and binding on the licensee.

(8) The licensee shall close his shop when ordered to do so by any District or Sub-Divisional Magistrate or Superintendent of Police by notice in writing for such period as such Magistrate or Superintendent of Police may think necessary for the preservation of the public peace and shall also keep his shop closed when ordered to do so by any Magistrate or any Police officer above the rank of Inspector in the event of occurrence and apprehension of riot or unlawful assembly in the vicinity of the shop.

Days when the shop to be kept closed.

19. The licensee shall keep his shop open barring following days:-

(a) 'Dry Days', declared by notification by the Government;

(b) 'General Election or by-election as per the guidelines of the Election Commissioner of India and State or local election conducted by statutory authority covering the area of the locations of the shops;

(c) Days directed by the Government to remain closed on account of proximity of the troops or for other emergent reason. During the day/days when the shop is to be kept closed, the licensee shall display a board with the inscription of "SHOP CLOSED" in bold at prominent place in the licensed premises.

Transfer of licence on the death of licensee.

20. In the event of death of a licensee during the currency of the licence, the Commissioner may renew the licence on the same terms in favour of representative of the deceased if he is satisfied that such representative is fit on the condition that any arrears due from the deceased licensee

are recovered before the licence is so renewed. In such case no fresh deposit shall be required.

Licensee to abide by the provision of Act, rules etc.

21. (1) Every licensee shall comply promptly with all orders or directions issued from time to time under the Act, Rules, Regulations and Orders made thereunder.

(2) The licensee or his successors or his assignees shall have no claim whatsoever to the continuance of the licence after the expiry of the period for which such licence was granted.

(3) When a licence is suspended or cancelled during the currency of the licence period or is not renewed on its expiry, the licensee shall forthwith surrender the whole stock of unsold Pachwai to the Commissioner. The stock so surrendered shall be sold by the Commissioner and the proceed of the sale shall, after deducting the expenses and any sum due to the Government, be returned to the licensee.

Suspension or cancellation of licence.

22. A licence may be suspended or cancelled in accordance with the provisions of the Act, rules, regulations and orders made thereunder from time to time.

PRINCIPAL SECRETARY
EXCISE (ABK) DEPARTMENT
GOVERNMENT OF SIKKIM

Form No. I

(See rule 3)

APPLICATION FORM FOR BREWING / PACHWAI RETAIL SHOP

Photo 3
(three) copies

To,

The Commissioner,
Excise (Abkari) Department,
Govt. of Sikkim,
Gangtok.

I beg to apply for licence under the provisions of Rule 3 of the Sikkim Excise (Licencing for Brewing / Sale of Pachwai by Retail) Rules, 2004.

My particulars and the details are enclosed as per the Enclosure I and II for kind consideration.

Thanking you.

Yours faithfully,

Signature of the Applicant

Name :.....

Address:.....

.....

ENCLOSURE I OF FORM I

1. Name of the applicant: .....
2. Occupation of the applicant: .....
3. (a) Place of Birth:.....
   (b) Date of Birth:.....
4. (a) Whether he is holding Sikkim Subject Certificate/ Certificate of Identification, if so, copy of the certificate to be furnished.
   (b) If it is otherwise, documentary evidence proving that he is a bonafide resident of the State of Sikkim be furnished.
5. Permanent Address in full.....
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
6. Present Address in full.....
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
7. Type of construction of proposed shop is whether RCC or wooden structure :.....
8. Whether proposed shop house is within the Schedule to the Sikkim Excise (Prohibited Sites for Liquor Shop) Rules, 1996.....
9. Whether proposed shop is to be set up in rented premises. If so, NOC from the house owner to run the Liquor Shop for a period of four years by the applicant to be furnished.
10. If the applicant proposed to appoint Salesman the details to be furnished as per Annexure II.
11. Size of proposed shop premises (Length..... sq. ft, breadth ..... sq. ft).
12. Details of the Excise Licence held in the previous year.
    (a) Licence No:.....
    (b) Kind of Shop: .....
    (c) Place:.....
    (d) District:.....
13. Whether any of the family members of the applicant was holding any Excise Licence during the last settlement/contract period.
    (a) Licence No:.....
    (b) Kind of Shop: .....
    (c) Place:.....
    (d) District:.....

I hereby declare that the aforesaid particulars are correct.

1. Signature: .....
2. Name: .....
3. Address:.....
   .....
4. Date:.....

Enclosure II of Form I

APPLICATION FOR REGISTRATION OF MANAGER / SALESMAN

(If the licensee proposes to appoint more than one Manager / Salesman, separate forms to be used for individual case)

To,

The Commissioner,
Excise (Abkari) Department,
Government of Sikkim,
Gangtok.

Subject: **REGISTRATION OF MANAGER / SALESMAN.**

Sir,

I would like to request you to kindly register the person whose particulars are indicated below as Manager / Salesman for my proposed Pachwai Retail Shop located at _____.

1. Name:.....
2. Present Address in full :
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
3. Permanent Address in full:
   Village:.....
   P.O.:.....
   Police Station:.....
   District :.....
4. (a) Place of Birth:.....
   (b) Date of Birth:.....
5. (a) Whether his a bonafide Sikkim Subject holder, if so, a copy of Certificate to be furnished.
   (b) If it is otherwise, documentary evidence proving that he is a bonafide resident of the state of Sikkim to be furnished.

This is certified that the particulars as furnished above are correct and signature of the proposed Manager /Salesman is as attested below.

Yours faithfully

Signature of the proposed Manager/ Salesman
Date:.....

Signature of the Licensee
(Full name)

Enclosure III of Form I

(See rule 18 (I))

REGISTRATION OF MANAGER /SALESMAN

No.. .....Ex/Abk

Dated:..,.....

Photo

Name of the Licensee:_____

Address:_____

Licence No._____

With reference to your application dated _____, this is to inform you that Shri _____has been appointed as **MANAGER / SALESMAN** of your Pachwai retail shop at _____ till _____.

This Salesman Registration Certificate issued by the Department **shall not be valid for any other purposes.**

COMMISSIONER/ EXCISE

EXCISE (ABKARI) DEPARTMENT

Form No. II

(See rule 4)

VERIFICATION REPORT

Ref. No. .....Ex/Abk Dated:.....

Sir,

With reference to application No.....dated.....on the case of Shri.....S/o.....resident of.....for the grant of Excise Licence to take undertake brewing/the Sale of Pachwai by retail, under the provisions of SikkimExcise (Licencing for Brewing/ Sale of pachwai by Retail) Rules, 2004; I have conducted a detailed enquir including spot verification and report is submitted below:-

1. The applicant is bonafide resident of the State (copies of Certivicate enclosed) .....
2. The applicant is neither a minor nor a Government employee.
3. The age of the applicant is.....years.
4. The applicant is having sound intergrity and he has not committed any crime under the provisions of the Sikkim Excise Act, 1992.
5. The shop is proposed to be opened at.....which falls within the Schedule to the Sikkim Excise (Prohibited Sites for Liquor Shops) Rules, 1996. (A rough sketch showing the details of the proposed location including its surroundings is enclosed).
6. The proposed location is along the side of the road and is distinctly visible from the road. (This is applicable only in case of foreign and Country Liquor retail shop).
7. The shop is proposed to be opened in his own house/rented house belonging to Shri/ Smt.....and the same is RCF/Ekra with GCI/thatched roof structure. Layout plan (including frontage area) and NOC from the house owner is enclosed.
8. The applicant has proposed to appoint Salesman for running the shop and the particulars as received in Enclosure II of Form I has been verified and same is found/not found inconformity with sikkim Excise (licensing for Sale of pachwai by Retail) Rules, 2004.

The undersigned have verified all the details furnished by the applicant after spot verification and the case meets/ does not meet therequirement as laid down in the Sikkim Excise (Licensing for Sale of pachwai by Retail) Rules, 2004. Hence recommended/not recommended (as the case does not meet provision under condition No.....of the Rules).

Signaure of the Verifying Officer
Name:
Designation
Station

Encl: as above.

Form No. III
(See rule 6(1)

No. .....Ex/Abk Dated:.....

To

.....

.....

.....

Sub: **SETTLEMENT ORDER.**

Reference your application dated_____ requesting for Excise license for Brewing / operating Sale of Pachwai by retail at your own house/rented house of Shri/ Smt._____ situated at _____ East/ North/South/West district has been approved and settled for a block period of 4 (four) years i.e. from 1st April, 2005 to_____. This settlement is subject to the provisions of the Sikkim Excise (Licencing for Brewing / Sale of Pachwai by Retail) Rules, 2004.

1. Payment of annual licence fee amounting to Rs._____ for the year _____ is to be deposited within 7 (seven) days from the date of issue of this order and Bank Receipt/ Challan after crediting the amount to Major Head "0039 State Excise-800-Licence Fee" in the State Bank of Sikkim for the year_____ and Fixed Deposit Receipt as security money for a period of _____ year of the equivalent amount in favour of the Commissioner Excise should be made. In the event of your failure to do so, this approved settlement order shall stands automatically cancelled.

2. In order to maintain continuity of operation, all the concerned Excise Officers and Warehouse Officers of the Department have been endorsed a list of this order who in turn may issue the liquor in your favour only on production of proof of your having paid the necessary Licence Fee and the Security Deposit as required.

3. The original copy of the Bank Receipt/Challan and Security Deposit should be submitted to the Deputy Commissioner (E/N), Excise, Gangtok for East and North Districts. Similarly for South and West Districts, they should be submitted to the Assistant Commissioner, Excise, Jorethang. You may retain the Xerox copies of both the receipts as proof of having paid the amount and also taking out the liquors from the respective warehouse.

COMMISSIONER/EXCISE

Copy to:-

1. Deputy Commissioner (E/N), Excise/ Asstt. Commissioner (S/W), Jorethang with the direction to obtain the report from the concerned officer and report to higher authority.
2. I.E. Melli / Rangpo / Jorethang / Gangtok. With direction to report the undersigned through proper channel after opening of the shop positively.
3. S.I.E. Gangtok / Mangan / Namchi / Gyalshing / Pakyong/ Ravangla / Soreng. channel after opening of the shop positively.
4. Guard file

COMMISSIONER/EXCISE

FORM IV
(See rule 16(i))

TRANSPORT PASS

Permit No..... Dated.....

1. Name of the Brewer:

2. Place of Brew:

3. Destination :

Name of Product	QUANTITY(in Saptu)	REMARKS.

Signature of the Officer-In-Charge

FORM V
(SEE RULE 16 (2)
(DAILY BREW & SALE REGISTER)

Date:.....

Opening stock on the Day (in Kg)	Fresh Receipt During the Day (in Kg)	SALE		Inspected by Name, Signature & Date	Remarks
		TP No.& date	Stock in Kg.		

Signature of Licensee/Salesman

Printed at Sikkim Government Press, Gangtok.